

Message Text

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ORIGIN L-03

INFO OCT-01 EUR-25 IO-12 ADP-00 AGR-20 CEA-02 CIAE-00

COME-00 DODE-00 EB-11 FRB-02 H-02 INR-10 INT-08

LAB-06 NSAE-00 NSC-10 PA-03 RSC-01 AID-20 CIEP-02

SS-15 STR-08 TAR-02 TRSE-00 USIA-12 PRS-01 OMB-01

AF-10 ARA-11 EA-11 NEA-10 /219 R

DRAFTED BY L/ EB: DFBURNS: LAS

4-30-73 EXT. 20446

APPROVED BY L/ EB: JDMUIR

STR: PROF. JACKSON

EB/ OT/ STA: MR. DEAL

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R 301847 Z APR 73

FM SECSTATE WASHDC

TO AMEMBASSY BERN

INFO USMISSION GENEVA

USMISSION OECD PARIS

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E. O. 11652: N/ A

TAGS: ETRD, US, GATT, SZ

SUBJECT: TRADE REFORM ACT OF 1973

REF: BERN 1506

EMBASSY IS AUTHORIZED TO DRAW ON THE FOLLOWING IN REPLYING
TO QUESTION RAISED BY JACOBI IN PARAGRAPH 5 REFTEL.

1. POSITION EXPRESSED BY JACOBI APPARENTLY REFLECTS BELIEF
THAT, SINCE AMENDMENT TO COUNTERVAILING DUTY STATUTE WILL
RESULT IN NEW STATUTE, AND SINCE, THEREFORE, THE " EXISTING
LEGISLATION" (LEGISLATION IN FORCE ON OCTOBER 30, 1947),
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UPON WHICH WE RELY TO SUPPORT ACTIONS NOT CONFORMING TO GATT WILL NO LONGER BE IN EFFECT, THE PROVISIONS OF SECTION 1(B) OF THE PROTOCOL OF PROVISIONAL APPLICATION WILL NO LONGER BE AVAILABLE TO US TO DEFEND NON- CONFORMITY OF COUNTERVAILING DUTY LAW WITH REQUIREMENTS OF ARTICLE VI OF GATT.

2. USG'S POSITION IS THAT OBLIGATIONS UNDER PROTOCOL OF PROVISIONAL APPLICATION DO NOT CHANGE, AND WERE FIXED AT TIME OF SIGNATURE. WHILE U. S. IS NOT AT LIBERTY TO CHANGE COUNTERVAILING DUTY LAW IN SUCH A WAY THAT ELEMENTS OF IT WHICH CONFORMED TO GATT IN 1947 ARE RENDERED INCONSISTENT WITH IT, NEITHER IS U. S. UNDER ANY OBLIGATION TO SEEK CHANGES TO ACT TO ELIMINATE EXISTING INCONSISTENCIES. IN

SUPPORT OF THIS VIEW, WE CITE ACTUAL LANGUAGE OF PROTOCOL, WHEREIN PARTIES AGREE TO APPLY PART II TO FULLEST EXTENT NOT INCONSISTENT WITH " EXISTING LEGISLATION." PHRASE " EXISTING LEGISLATION" WAS RULED TO MEAN LEGISLATION IN EFFECT ON OCTOBER 30, 1947: SEE BISD II/35. U. S., THEREFORE, IS UNDER NO DUTY TO APPLY PROVISIONS OF GATT WHICH ARE INCONSISTENT WITH LEGISLATION IN EFFECT IN 1947, WHETHER OR NOT THAT LEGISLATION CONTINUES IN FORCE UNCHANGED.

3. ACCORDINGLY, USG DOES NOT AGREE THAT ANY AMENDMENT TO COUNTERVAILING DUTY STATUTE MUST RENDER STATUTE COMPLETELY CONSISTENT WITH GATT. AMENDMENT ITSELF, HOWEVER, MUST BE CONSISTENT WITH U. S. OBLIGATIONS UNDER PROTOCOL.

4. AS RESULT OF COMPREHENSIVE REVIEW OF GATT IN 1954-55, CPS AGREED THAT PARTIES COULD ADHERE DEFINITELY UNDER ARTICLE XXVI, BUT SUBJECT TO RESERVATION FOR INCONSISTENT LEGISLATION ON DATE OF APPLICATION. REPORT INDICATED THAT GENERAL INTENT OF PROPOSAL FOR DEFINITIVE ADHERENCE SUBJECT TO RESERVATION WAS TO SECURE EARLIEST POSSIBLE COMPLETE CONFORMITY BETWEEN LEGISLATION AND GATT (BISD 3 S/249, PARAGRAPH 56). NO CPS, HOWEVER, HAVE ADHERED DEFINITELY SUBJECT TO THIS RESERVATION.

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5. PROPOSED AMENDMENTS TO COUNTERVAILING DUTY STATUTE WOULD (1) SUBJECT DUTY- FREE GOODS TO COUNTERVAILING DUTIES, SUBJECT TO A FINDING OF MATERIAL INJURY TO THE DOMESTIC INDUSTRY, AND (2) GRANT DISCRETION TO THE SECRETARY OF THE TREASURY NOT TO IMPOSE COUNTERVAILING DUTIES WHERE TO DO SO WOULD RESULT IN A SIGNIFICANT DETRIMENT TO US ECONOMIC INTERESTS OR WOULD BE INEFFECTIVE

BY REASON OF THE EXISTENCE OF US QUANTITATIVE RESTRICTIONS
ON THE PRODUCT IN QUESTION. YY

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*** Current Handling Restrictions *** n/a

*** Current Classification *** LIMITED OFFICIAL USE

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